Office-Supreme Court, U.S.
FILED
JAN 31 1981

No. 80-737

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

CITIZENS AGAINST RENT CONTROL/COALITION FOR FAIR HOUSING, an unincorporated association; MASON-McDUFFIE, a California corporation; BERKELEY BOARD OF REALTORS, a California nonprofit association; BETTY GERITZ; MURIEL ROSENKRANZ and EVA FLOYSTRUP,
Appellants,

vs.

CITY OF BERKELEY, CALIFORNIA, a municipal corporation; THE BERKELEY CITY COUNCIL; THE BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION; STEVE MAYER, JESS ROSENBERG, PETER COHON, BARBARA BERNSTEIN, JUDITH LEFKOWITZ, GARY GRESHER, as members of the Berkeley Fair Campaign Practices Commission,
Appellees.

On Appeal from the Supreme Court of the State of California

MOTION TO DISMISS APPEAL

NATALIE E. WEST
City Attorney
CHARLES O. TRIEBEL, JR.
COUNSEL OF RECORD
2180 Milvia Street, Fifth Floor
Berkeley, California 94704
Telephone: (415) 644-6380
Attorneys for Appellees.

BOWNE-PERNAU WALSH • 1045 SANSOME ST. • S.F., CA 94111 • (415) 981-7882

QUESTIONS PRESENTED

1. Did the California Supreme Court properly uphold an initiative ordinance adopted by the people of Berkeley which limits the size of campaign contributions to political committees supporting or opposing ballot measures?

2. Is this case distinguishable from the decision of the United States Court of Appeals for the Fifth Circuit in *Let's Help Florida v. McCrary*, 621 F.2d 195 (5th Cir. 1980)?

PARTIES

The current members of the Berkeley Fair Campaign Practices Commission are Steve Mayer, Jess Rosenberg, Peter Cohon, Barbara Bernstein, Judith Lefkowitz, and Gary Gresher.

TABLE OF CONTENTS

	Page
Questions presented	i
Parties	i
Jurisdiction	2
Statutes involved	2
Statement	2
Argument	4
I	
The California Supreme Court correctly upheld the constitutionality of the Berkeley campaign contribution limitation	4
A. The impact of contribution limitations on protected rights	4
B. Governmental interests	10
C. The contribution limitation is the least restrictive means of promoting this interest	13
II	
This case is distinguishable from Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980)	14
Conclusion	17

TABLE OF AUTHORITIES CITED

Cases

Page

Bellotti v. First National Bank of Boston, 435 U.S. 765 (1978) 11, 12

Buckley v. Valeo, 424 U.S. 1 (1976) 4, 5, 6, 7, 8, 9, 10, 15

C & C Plywood Corp. v. Hanson, 583 F.2d 421 (9th Cir. 1978) 12

Citizens Against Rent Control v. City of Berkeley, 27 Cal.3d 819, 614 P.2d 742, 167 Cal.Rptr. 84 (1980) 2

Citizens for Jobs & Energy v. Fair Political Practices Comm'n, 16 Cal.3d 671, 129 Cal.Rptr. 106, 547 P.2d 1386 (1976) 7

First National Bank of Boston v. Bellotti, 436 U.S. 765 (1978) 4, 5

Fullilove v. Klutznick, ... U.S. ....., 48 U.S.L.W. 4979 (July, 1980) 5

Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980) ..... i, 5, 14, 15, 16, 17

Let's Help Florida v. Smathers, 453 F.Supp. 1003 (N.D. Fla. 1978) 15

Pacific Gas & Electric Co. v. City of Berkeley, 60 Cal. App. 123, 131 Cal.Rptr. 350 (1976) 12

Robins v. Pruneyard Shopping Center, 23 Cal.3d 899, 153 Cal.Rptr. 854, 592 P.2d 341 (1979) 10

Schwartz v. Romnes, 495 F.2d 844 (2d Cir. 1974) 12

United States v. Automobile Workers, 352 U.S. 567 (1957) 11, 14

Wilson v. Superior Court, 13 Cal.3d 652, 119 Cal.Rptr. 468, 532 P.2d 116 (1975) 10

Table of Authorities Cited

Constitutions

Page

United States Constitution:
First Amendment 4, 5, 8, 10

California Constitution:
Article I, Section 2 ..... 4, 10

Ordinances

Berkeley, Cal., Berkeley Election Reform Act of 1974, Ordinance 4700-N.S. (June 4, 1974): ..... passim
Section 206 7
Sections 510-518 7
Section 602 ..... 2, 3, 4
Section 604 3

Rules

U.S. Supreme Court Rule 16.1(b) 1

Statutes

California Election Code, Section 22808 2

28 U.S.C. Section 1257(2) (1976) 2

No. 80-737

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

CITIZENS AGAINST RENT CONTROL/COALITION FOR FAIR HOUSING, an unincorporated association; MASON-McDUFFIE, a California corporation; BERKELEY BOARD OF REALTORS, a California nonprofit association; BETTY GERITZ; MURIEL ROSENKRANZ and EVA FLOYSTRUP,
Appellants,

vs.

CITY OF BERKELEY, CALIFORNIA, a municipal corporation; THE BERKELEY CITY COUNCIL; THE BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION; STEVE MAYER, JESS ROSENBERG, PETER COHON, BARBARA BERNSTEIN, JUDITH LEFKOWITZ, GARY GRESHER, as members of the Berkeley Fair Campaign Practices Commission,
Appellees.

On Appeal from the Supreme Court of the State of California

MOTION TO DISMISS APPEAL

Pursuant to Rule 16.1(b) of the Rules of this Court, appellees move that this appeal be dismissed on the ground that it does not present a substantial federal question.

JURISDICTION

This case is an appeal from decision of the California Supreme Court, *Citizens Against Rent Control v. City of Berkeley*, 27 Cal.3d 819, 614 P.2d 742, 167 Cal.Rptr. 84 (1980), filed August 7, 1980. The decision is set out in the appendix to the Jurisdictional Statement at A-1. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(2).

STATUTES INVOLVED

The relevant portions of the Berkeley Election Reform Act of 1974 are set forth in the Jurisdictional Statement at 3-4 (hereinafter "J.S.") and Appendix to Jurisdictional Statement at A-53 (hereinafter "J.S. App.").

STATEMENT

Berkeley's Election Reform Act of 1974 (Ord. No. 4700-N.S.) regulates its municipal elections. Section 602 of that ordinance provides:

> "No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to a measure to exceed two hundred and fifty dollars ($250)."[1]

At the April 19, 1977 municipal election, the voters of Berkeley voted on a proposed charter amendment initia-

---

[1]Section 602 is authorized by Section 22808 of the California Elections Code which provides: "A city may by ordinance or resolution limit campaign contributions in municipal elections."

tive concerning rent control. Appellant Citizens Against Rent Control (hereinafter "CARC") is a campaign committee that opposed the measure. CARC raised over $108,000 from more than 1,300 contributors. Of this, six contributors made contributions in excess of the $250 limit. These contributions totalled $18,600.

On March 30, 1977, the Fair Campaign Practices Commission ordered CARC to pay the surplus funds into the City's General Fund as required by Section 604 of the Act.[2] CARC responded by filing a complaint for injunctive and declaratory relief against the City and the Commission, contending that Section 602 violated its rights of freedom of speech and association under the California and United States Constitutions and violated the rights of other named plaintiffs who desired to make contributions larger than $250. Two weeks before the election, the trial court granted a preliminary injunction against enforcement of the contribution limitation. However, CARC had ended all fund raising almost a month before the election and did not raise additional funds during this period. The campaign against the initiative was successful and the proposed Charter Amendment was defeated.

After the election, CARC amended its complaint to allege that it had accumulated a campaign debt of ap-

---

[2]Section 604 provides: "If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City Auditor for deposit in the General Fund of the City."

proximately $8,000 and it sought to solicit large contributions to satisfy this debt. CARC then moved for summary judgment on the ground that Section 602 was invalid on its face. The superior court granted the motion and rendered a judgment declaring that Section 602 violated the First Amendment to the United States Constitution and Article I, Section 2, of the California Constitution. On appeal, the California Supreme Court reversed the judgment, concluding that "the Berkeley ordinance is necessary to the accomplishment of compelling governmental interests, and uses the least restrictive means to achieve those ends. It violates neither the First Amendment nor Article I, section 2, of the California Constitution." J.S. App. A-18.

This appeal follows.

ARGUMENT

I

THE CALIFORNIA SUPREME COURT CORRECTLY UPHELD THE CONSTITUTIONALITY OF THE BERKELEY CAMPAIGN CONTRIBUTION LIMITATION

A. The Impact of Contribution Limitations on Protected Rights

There are two decisions of this Court that are particularly relevant to an analysis of this case. *Buckley v. Valeo*, 424 U.S. 1 (1976), upheld contribution limitations but invalidated expenditure limitations contained within a federal act that regulates only candidate campaigns. *First National Bank of Boston v. Bellotti*, 436 U.S. 765 (1978), struck down a Massachusetts statute that completely prohibited corporate expenditures and contributions in referenda campaigns. In this case, the California Supreme Court

distinguished *Bellotti* and held that the Berkeley ordinance, like the portions of the federal statute upheld in *Buckley*, serve a compelling governmental interest. In another case, the Fifth Circuit has followed *Bellotti* and has held that a Florida statute limiting contributions to ballot measures is invalid. *Let's Help Florida v. McCrary*, 621 F.2d 195 (5th Cir. 1980). For the reasons set forth herein, appellees believe that the decision of the California Supreme Court is correct and that the decision of the Fifth Circuit can be distinguished from the instant case.

Appellees do not dispute that the contribution limitations involve fundamental interests of speech and association and must be supported by sufficiently important governmental interests. But this is merely the beginning and not, as appellants would have it, the end of the inquiry, for general declarations concerning the importance of First Amendment rights do not decide specific cases. To decide this case, the extent of the contribution limits' impingement on First Amendment rights must be weighed against the interests served. Even under strict scrutiny, a narrowly tailored measure may pass constitutional muster when necessary to serve a compelling interest. *Fullilove v. Klutznick*, ... U.S. ....., 48 U.S.L.W. 4979 (July, 1980).

Analysis of the extent to which the contribution limitation implicates freedom of speech must consider its effect on both the contributor and on the recipient. With respect to the contributor, the limitation on the amount that a person may contribute to a political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. *Buckley v. Valeo*, 424 U.S.

at 20-21 (1976). In *Buckley*, the Court set forth the reasons that a contribution limitation only marginally restricts communication, stating:

> A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication but does not in any way infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor. *Id.* at 21.

Moreover, the Berkeley ordinance permits persons who might otherwise contribute amounts greater than the statutory limits to spend funds on direct political expression without limitation. Thus, the contribution limitation in no way restricts the contributor's rights to speak himself or to spend funds on political expression. The provision for direct expenditures tends to increase the number of voices participating in an election campaign, thus expanding the range of political expression without reducing the total amount of speech.

The contribution limitation does not restrict any individual's ability to communicate about the measure by becoming actively involved with the campaign. Contributors may render personal services to the campaign committee and may incur limited expenses to support these volunteer services without restriction because volunteer activities and incidental expenses are excluded from the definition of contribution.[3]

As passed by the voters, the Berkeley ordinance restricted expenditures as well as contributions to ballot measure campaigns. After this Court invalidated expenditure limitations in *Buckley v. Valeo,* 424 U.S. 1 (1976), the California Supreme Court invalidated statewide expenditure limitations in ballot measure campaigns. *Citizens for Jobs & Energy v. Fair Political Practices Comm'n,* 16 Cal.3d 671, 129 Cal.Rptr. 106, 547 P.2d 1386 (1976). After these decisions, the City of Berkeley repealed the expenditure limitations, Sections 510-518. Although those sections are quoted in the Appendix to the Jurisdictional Statement at A-77-79, they are not in force and are not at issue in this action.

In summary, the contribution limitation imposes only an incidental impact on the contributor's freedom of speech. It allows the contributor to make contributions totalling $250 in any ballot measure campaign, to make unlimited

---

[3] ". . . The 'contribution' shall not include a gift of service or labor, . . . nor shall the term 'contribution' include a gift of the use of personal or real property where the value of such use is not in excess of $50, nor shall it include food and beverages the value of which for any one event is no more than $50." Ordinance No. 4700-N.S., Section 206.

direct expenditures, and to volunteer his personal efforts without restriction.

The statute's effect on the political speech of the recipient is no greater. Here, as in *Buckley*, the contribution limitation merely "require(s) candidates and political committees to raise funds from a greater number of persons." *Buckely v. Valeo, supra,* at 22. By forcing political committees to broaden their base, the statute has the effect of bringing persons who might otherwise not participate into the political process, thus enhancing First Amendment values.

The limit does not restrict the quantity or content of political speech. The record in this case demonstrates that the ability of CARC, the recipient political committee, to carry on an effective campaign was not impaired by the contribution limitation. The campaign committee developed a budget of just over $100,000 which it believed necessary to carry on an effective campaign. It raised $108,000 from over 1,300 contributors by mid-March 1977, a month before the election. Almost $90,000 was raised from contributors who complied with the statutory limit. Because its budget had been reached, the committee completely ceased fund-raising during the last month of the campaign. Perhaps the clearest indication that the committee was able to communicate its point of view to the electorate effectively is the fact that the rent control measure was defeated.

Contribution limitations also implicate protected associational freedoms. Making a contribution, like joining a political party serves to affiliate a person with a candidate or a cause. In addition, it enables like-minded persons to

pool their resources in furtherance of common political goals. *Buckley v. Valeo, supra,* at 22. However, the impact of Berkeley's ordinance on the associational freedoms of contributors is insubstantial. The contribution limitation leaves the contributor free to become a member of any political committee and to make monetary contributions cumulating $250 to support or oppose any measure. In addition, the contributor may participate personally in all of the campaign committee's efforts relating to the measure. In their jurisdictional statement, appellants describe certain ways in which the $250 contribution limitation allegedly infringes on their associational rights, but because volunteer personal services are not "contributions," most of these activities are not even subject to the contribution limitation.[4] Appellants and all who want to associate with them can engage in research, discuss campaign strategy. poll voters by walking precincts or making telephone calls, coordinate malings and solicit others to contribute funds without restriction. As the California Supreme Court held,

> (Under) the Berkeley Ordinance anyone who wishes to do so may join and work for any committee supporting or opposing a ballot measure. This is the heart of the freedom to associate; no case has held that the right extends so far as to entitle political contributors to dominate such committees and their campaigns by unconstrained financial pressure." J.S. App.at A-16.

---

[4]". . . (S)ection 602 restrains . . . persons from acting in concert to engage in vital campaign activities including the conduct of coordinated research, discussion of campaign strategy, polling of voters, coordination of mailings to voters, purchase of political advertisements and media messages, hiring of skilled campaign management and the solicitation of others to contribute funds." J.S. 10.

Just as the quantity of communication by a contributor does not increase perceptibly with the size of his contribution, *Buckley v. Valeo, supra,* at 21, the amount of associating by a contributor does not increase just because the amount of his contribution increases. An individual who contributes $200 does not associate twice as much as one who contributes $100. In fact, a persuasive argument can be made that the contribution limitations actually increase, rather than restrict, the contributor's right to associate by giving the individual contributor an opportunity to associate with a greater number of persons who have pooled their respective resources in support of a common goal.

B. Governmental Interests

The relatively slight infringement on protected rights of the contributor and the recipient campaign committee must be weighed against the significance of the governmental interests vindicated by the contribution limitation. The California Supreme Court concluded that governmental interests in preserving the integrity of the initiative and referendum are sufficiently weighty to support the contribution limitation.[5] It is undisputed that the state has

---

[5]The California Supreme Court not only held that the ordinance meets the requirements of the First Amendment to the United States Constitution, it also concluded that the contribution limitation vindicates sufficiently important interests under the California Constitution, Article I, Section 2, a provision which the California court has held is "more definitive and inclusive than the First Amendment . . ." *Robins v. Pruneyard Shopping Center,* 23 Cal.3d 899, 908, 153 Cal.Rptr. 854, 592 P.2d 341 (1979); *Wilson v. Superior Court,* 13 Cal.3d 652, 658, 119 Cal.Rptr. 468, 532 P.2d 116 (1975).

a compelling interest in preserving the integrity of the political process, and sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government. *United States v. Automobile Workers,* 352 U.S. 567, 570 (1957). The California Supreme Court reviewed the history, purpose and function of the initiative and concluded that the contribution limitation promotes these state interests both directly and indirectly. The limitation directly results in broader public participation in the initiative process by requiring political committees to broaden their base of support to raise funds for a political campaign. In this way, the contribution limitation assures that the initiative will not become a tool of certain vested interests which have substantial amounts of money but almost no broad public support. The limitation also has an indirect impact in that more people will participate in the electoral process if they believe their participation, whether in the form of money or services, is significant. Thus, both directly and indirectly, the contribution limitation serves to promote an active, alert, and responsible citizenry. It protects the electorate's right to exercise the power of direct democracy and to retain control of a legislative process it believed could be dominated by special interests.

The governmental interests accepted by the California Supreme Court as sufficient bases for the contribution limitation are similar to the interests which were recognized but rejected by this Court as inapplicable when it struck down the Massachusetts prohibition on corporate participation in most referendum campaigns. *Bellotti v. First National Bank of Boston,* 435 U.S. 765 (1978). However,

the factual differences between *Bellotti* and the instant case are so significant that *Bellotti* is easily distinguished.

In *Bellotti*, the state statute had substantial impact on protected rights. The statute completely prohibited any corporate participation in a referendum campaign that involved a tax issue or other issue not materially affecting the corporation's business. The statute proscribed not only campaign contributions but also direct expenditures by corporations. The absolute prohibition on contributions denied recipient committees all funding from corporate sources and denied corporate contributors any right to associate through monetary means. In contrast, as described in detail above, the Berkeley ordinance has a very limited impact on protected rights. The Berkeley ordinance treats each person who participates in a ballot measure campaign in the same way. Every "person," whether an individual, association, corporation or any other entity, may make contributions, totaling $250.[6] The Berkeley ordinance permits all entities to make unlimited independent expenditures and to volunteer services in the campaign.

Bellotti and the circuit court decisions *Schwartz v. Romnes*, 495 F. 2d 844 (2d Cir. 1974), and *C & C Plywood Corp. v. Hanson*, 583 F. 2d 421 (9th Cir. 1978), all arose because corporate participation in ballot measure campaigns was completely prohibited. In this case, in which governmental action takes the form of a contribution limitation that allows every entity an equal opportunity to

---

[6]As originally drafted, the Berkeley ordinance did prohibit corporate contributions to ballot measure campaigns but this provision was invalidated. *Pacific Gas and Electric Co. v. City of Berkeley*, 60 Cal.App.3d 123, 131 Cal.Rptr. 350 (1976).

speak and be heard in the electoral process, the ordinance promotes the compelling governmental interest in the integrity of the electoral process without unduly infringing on protected rights of freedom and association.

C. The Contribution Limitation Is the Least Restrictive Means of Promoting This Interest

Berkeley's contribution limitation is the least restrictive means of vindicating the governmental interest at issue in this case. The $250 limitation on contributions to a ballot measure campaign is narrowly written to focus precisely on the problem. In the words of the California Supreme Court, "large contributions to a local ballot measure campaign threaten our electoral system and potentially pervert the purpose of initiative procedures." J.S. App. A-17.

The $250 limitation is not unreasonably low. Indeed, it is an amount which allows the majority of contributors to participate in a local campaign with no restriction at all.

Campaign disclosure is also not an adequate protection to the evil sought to be alleviated or prevented by the contribution limitation. When certain interests make large contributions, campaign disclosure merely reinforces the voter's view that the initiative has become a tool of those interests. Thus, campaign disclosure, while serving the salutary goal of public information, does not counteract the problem of voter apathy.

The initiative and referendum were adopted by the voters of California in 1911, shortly after the federal government enacted the prohibition on corporate and labor union participation in candidate campaigns. Both reforms

were adopted because of a belief that government had become a tool of special interests and that the ordinary citizen was disenfranchised by the effect of money on government. Now, some seventy years later, there are widespread indications that the initiative process, intended to return the reins of government to the people, has itself become a tool of special interests. Surely it is within the province of the people, who exercised their right of initiative by adopting the Berkeley Election Reform Act of 1974, to limit contributions to ballot measure campaigns and thereby to preserve and enhance "the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *United States v. Automobile Workers*, 352 U.S. 567, 575 (1957).

II

THIS CASE IS DISTINGUISHABLE FROM LET'S HELP FLORIDA v. McCRARY, 621 F.2d 195 (5th Cir. 1980)

On December 8, 1980, an appeal was filed from the decision of the United States Court of Appeals for the Fifth Circuit in *Let's Help Florida v. McCrary*, 621 F.2d 195 (5th Cir. 1980), appeal pending (No. 80-970, filed December 8, 1980). That decision strikes down a Florida statute limiting contributions in ballot measure campaigns. The Fifth Circuit held that:

> Because campaign contributions implicate important first amendment rights and because Florida has shown no sufficiently important interest to justify restricting the contributions in a referendum election, we affirm the district court decisions declaring these statutory restrictions unconstitutional. 621 F.2d at 197.

There are important factual differences which distinguish this case from the Florida case. With respect to the extent of the infringement on protected interests in *Let's Help Florida* it was undisputed that the contribution limitation prevented the campaign committee from amassing enough funds to carry on an effective campaign. *Let's Help Florida v. Smathers*, 453 F.Supp. 1003, 1011 (N.D. Fla. 1978). In contrast, in this case appellants were able to carry on a successful campaign and did not even actively engage in fund-raising during the last month of the campaign, a period when presumably they would have been able to raise additional funds. J.S. App. A-15. The impact of a contribution limitation on fund-raising is significant and was considered by this Court in *Buckley v. Valeo*, 424 U.S. at 21:

> . . . (C)ontribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication however that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns and political associations.

Although appellees believe that the cases are distinguishable, appellees urge that if this Court determines to consider the Florida case, it also note probable jurisdiction in the California case. Because of the differences between the Florida statute and the Berkeley ordinance, a decision in the Florida case alone would leave areas of ambiguity, and if this Court determines to consider the issue of contribution limitations in ballot measure cam-

paigns, it should consider all facets of the issue at the same time.

A comparison of the two statutes indicates the differences between them. The California case involves a local ordinance regulating contributions to local elections; the contribution limitation is $250. The Florida statute limits contributions to state and county elections; the limitation is $3,000 and $1,000, respectively. The Berkeley ordinance imposes a limit on the amount contributed in any campaign. The Florida statute apparently limits contributions to a single *committee*. Thus, a contributor could contribute the maximum amount to each committee. *Let's Help Florida v. McCrary, supra,* at 200. The Berkeley ordinance applies only to measures which have qualified for the ballot; the Florida statute applies to both the qualification drive and to the campaign itself. Citizens Against Rent Control is a political committee that carried on a campaign in opposition to a measure that appeared on the ballot in April 1977. Let's Help Florida is a political committee that waged a petition drive under the initiative provisions of the Florida constitution in an effort to place a casino gambling proposal on the ballot in the November 1978 election.

CONCLUSION

For the reasons set forth above, appellees respectfully request that the appeal in this action be dismissed. In the alternative, if probable jurisdiction is noted in *Let's Help Florida v. McCrary*, 621 F.2d 195 (5th Cir. 1980), appeal pending (No. 80-970, filed December 8, 1980), jurisdiction should also be noted here and both cases set for argument in tandem.

Respectfully submitted,

NATALIE E. WEST
City Attorney
CHARLES O. TRIEBEL, JR.
COUNSEL OF RECORD
2180 Milvia Street, Fifth Floor
Berkeley, California 94704
Telephone: (415) 644-6380
Attorneys for Appellees.